

In the Matter of License No. 210676 and All Other Seaman Documents
Issued to: Charles A. Solfrank

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1283

Charles A. Solfrank

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

An order dated 5 December 1960 was rendered by an Examiner of the United States Coast Guard after conducting a hearing at Cleveland, Ohio. The Examiner suspended, on probation, Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as the Master on board the United States SS FINLAND under authority of the license above described, Appellant wrongfully failed to report to the Coast Guard, as soon as possible in writing, two casualties to his vessel; one occurred on 1 May 1960 causing \$6,000 damage, the other happened on 20 May 1960 resulting in \$35,000 damage.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of a Coast Guard hull inspector and documentary exhibits.

In defense, Appellant testified that he and a plate engineer thought the damage done to the vessel on 1 May 1960 was less than \$1500 and, therefore, it was not reported to the Coast Guard; the ship was not grounded on 20 May because the ship did not stop when it rubbed against the rocks; there was no reason to believe that the damage caused on 20 May was in excess of \$1500; both casualties were immediately reported to the owner.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of twenty days on six months' probation.

FINDINGS OF FACT

On 1 May and 20 May 1960, Appellant was serving as the Master on board the United States SS FINLAND and acting under authority of his license.

The FINLAND was being towed by two tugboats to make a landing at the Upper Republic

Ore Dock in Cleveland, Ohio, on 1 May 1960, when the ship's port bow struck the dock causing \$6,000 damage to the ship. Appellant mailed a report of this casualty to the shipowner right away but he did not notify the Coast Guard, in person or on Form CG-2692, both of which are required by 46 CFR 136.05-10, until June 1960.

On 20 May 1960, the FINLAND suffered about \$35,000 damage when she struck rocks in the shoals off Pellet Island while entering Silver Bay harbor, Minnesota. Most of the damage was below the water line at the turn of the bilge in the area of the No. 2 port side tank. Again, the owner was notified by mail without delay but no report was filed with the Coast Guard until 9 June 1960.

At the request of the owner of the FINLAND, a Coast Guard inspector was on board on 9 June 1960 in connection with a survey of damages. As a result of this survey, it was determined that the casualty damages, on 1 May and 20 May, were \$6,000 and \$35,000, respectively. At this time, the inspector obtained the reports to the Coast Guard from Appellant for the two casualties.

Appellant has no prior record. He has been going to sea for 40 years and has served as a Master for 20 years.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that it is a denial of due process to take this action on the basis of regulations (46 CFR 136.05-1, 13.05-10) which are uncertain and vague as to what persons are ultimately responsible for reporting marine casualties to the Coast Guard in writing; what constitutes timely reporting; and what must be reported in order not to violate the regulations.

The charges against Appellant should be dismissed because he acted in good faith and, at most, was guilty of an error of judgment. Appellant was not apprised of the fact that the Master is considered to be the "person in charge of the vessel" and, therefore ultimately responsible under 46 CFR 136.05-10 for reporting casualties to the Coast Guard. According to Appellant's honest judgment, the damage did not amount to \$1500 in either casualty although he made every reasonable effort to determine the extent of damage based on information available at the time of the casualties. There is no evidence that there was "misbehavior" or a "willful violation of a regulation" which are stated in 46 U.S. Code 239(g) as bases for proceeding under that statute. "Misconduct" is not mentioned in 46 U. S. Code 239(g).

APPEARANCE: Johnson, Branand and Jaegar of Cleveland, Ohio, by Scott H. Elder, Esquire, of Counsel.

OPINION

For the purpose of these proceedings, it is considered that "misconduct" is synonymous with "misbehavior." Consequently, it was proper to charge Appellant with "misconduct" and it is not

necessary to conclude, in order to find that Appellant was guilty as alleged, that his acts constituted "willful violations of a regulation."

As applied to this particular case, 46 CFR 136.05-1 and required the "person in charge of the vessel" to, "as soon as possible, report in writing on form CG-2692 and in person to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival "marine casualties resulting in:

"a) Actual physical damage to property in excess of \$1,500.

* * *

"(c) Stranding or grounding."

I agree with the Examiner that the only logical interpretation of this regulation is to place the responsibility on the master as the "person in charge of the vessel" when he is on board at the time of the casualty. As the agent of the owner, the Master is in command and, therefore, "in charge" of the ship. The fact that, at the time of these two casualties, For, CG-2692 indicated that it could be signed by the "master, owner, charterer or agent" did not alter the force of 46 CFR 136.05-10 which specifically requires a report by the person in charge of the vessel.

The requirement of reporting "as soon as possible" cannot reasonably be extended to include, as timely, reports made on 9 June for casualties which occurred on 1 May and 20 May.

As to the damage from the casualty on 1 May, the Coast Guard hull inspector testified that "two plates were lightly scored in an area 16 feet by 4 feet" (R. 40). Appellant testified that it was his opinion and that of a "plate engineer" that the damage was under \$1500 and, for this reason, he did not report it to the Coast Guard (R.52). In the absence of better evidence that Appellant had, or should have had, cause to believe that the damage was in excess of \$1,500, the conclusion that this specification constituted misconduct is reversed and the specification is dismissed.

It is clear from the evidence that the casualty on 20 May was a grounding in the sense that the ship struck rocks on the bottom causing damage at the turn of the bilge by the No. 2 port side tank (R. 41, 44 and 61). The International Maritime Dictionary (1948) by Rene' de Kerchoue states:

"Ground. To run ashore. To strike the bottom through ignorance, violence, or accident."

According to this definition, it is not material that the ship did not stop. Commandant's Appeal Decisions Nos. 730 and 1197 indicate that a grounding occurs when a vessel strikes the bottom with no noticeable decrease in speed. Both the regulations and Form CG-2692 make specific reference to "grounding" as well as "stranding." Since by common definition stranding connotes some stopping of a vessel, the logical distinction is that a "grounding" does not necessarily cause a vessel to stop. Therefore, it seems clear that this casualty was required to have been reported by Appellant to the Coast Guard as a grounding regardless of the extent of the damage. Nevertheless, Appellant deliberately chose not to report this accident to the Coast Guard although he mailed a report to the shipowner without delay.

In addition, there is sufficient evidence that Appellant was put on notice to report the casualty under the \$1500 damage provision in the regulations. The Mate reported that the No. 2 port side tank was damaged but that he could not tell whether "it was old damage or new damage" (R. 54). When questioned as to why he had the Mate examine this tank, Appellant was vague and evasive (R.60). In view of the impossibility of reasonably estimating the underwater damage, Appellant should have reported this casualty to the Coast Guard regardless of the grounding aspect.

The report to the shipowner did not satisfy the requirement of 46 CFR 136.05-10 that Appellant, as the Master, report this casualty to the Coast Guard as soon as possible in writing. Commandant's Appeal Decision No. 727.

The seriousness of this offense of failure to report a grounding warrants the order imposed even though the other specification has been dismissed.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 5 December 1960, is **AFFIRMED**.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 12th day of February, 1962.